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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,924	03/28/2005	Carsten Hermansen	742113-33	1913

25570 7590 01/17/2007  
ROBERTS, MLOTKOWSKI & HOBBS  
P. O. BOX 10064  
MCLEAN, VA 22102-8064

EXAMINER
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DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/523,924	HERMANSEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Clark F. Dexter	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/7/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement filed on February 7, 2005 has been received and the references listed thereon have been considered.

### ***Abstract***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it is too long, and because of the use of "means" in lines 4, 6 and 12. Appropriate correction is required. See MPEP § 608.01(b).

***Specification***

5. The disclosure is objected to because of the following informalities:

On page 6, line 27, "extruded ice mass 1" is inaccurate and "1" should read --2--.

Appropriate correction is required.

***Claim Objections***

6. Claims 1-6, 10 and 11 are objected to because of the following informalities:

In claim 1, line 2, the recitation "which immediately after the nozzle" is not sufficiently clear as to what is being set forth since the invention could be interpreted as being positively defined in terms of the nozzle which is not part of the claimed invention, that is, the "device" (note that the claims set forth a device for use with a nozzle, wherein the claims are directed to the device, and wherein there is no clear indication that the combination of the device and the nozzle is intended to be claimed); in line 7, "transverse first, plane" is improper and should read --transverse, first plane-- or the like; in lines 7-8, the recitation "immediately after the outlet of the nozzle" is not sufficiently clear as to what is being set forth since the invention is being positively defined in terms of the nozzle which is not part of the claimed invention (i.e., the device); in line 9, it seems that --second-- should be inserted before "plane" or the like for clarity.

In claim 2, line 2, "knifes" should read --knives--, and "securing" is not sufficiently clear; in line 4, the recitation "simultaneously movement" is grammatically improper.

In claim 5, line 2; it seems that "eccentric" should be changed to --eccentrically-- or the like; in line 4, "knifes" should read --knives--.

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In claim 10, line 4, it seems that --a-- is missing before "drive" or the like.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112, 1<sup>st</sup> paragraph***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The disclosure does not provide sufficient support for the invention as claimed, particularly for the drive structure of the cutting device. For example, the specific structure to simultaneously drive the knives and to provide the knives with different stroke lengths is not sufficiently disclosed and thus it is not clear as to how such a function is accomplished. Further, the figures, particularly Figure 5, do not clearly illustrate the structure to perform the claimed functions. As a further example, the specific structure of the drive components including the rotor means, the coupling means and the rotating drive means are not sufficiently disclosed, and thus it is not clear as to how they interact with one another as well as how they act together to drive the knives.

***Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph***

9. Claims 1-6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 10, "which" is vague as to what it refers (e.g., the second knife or the plane), and further the recitation "which is arranged immediately below the first knife" is vague and indefinite and appears to be inaccurate, and it is suggested in line 10 to change " and which" to --which second plane-- or to -- , wherein the second plane--, and also in line 10 to change "first knife" to --first plane-- or the like for clarity.

In claim 4, line 2, the recitation "the means of control" lacks antecedent basis.

In claim 5, lines 2-3, the recitation "rotor means which by coupling means are attached to rotating drive means" is vague and indefinite in view of the recitation of the "means for reciprocation" in claim 1.

In claim 6, lines 2-4, the recitation "means for engaging the coupling for performing ..." is vague and indefinite as to what disclosed structure it refers.

In claim 11, line 1, "the coupling means" lacks antecedent basis; in line 2, "the control means" lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hahn, pn 2,648,383.

Hahn discloses a device for through-cutting (e.g., in Figs. 6-7) with every structural limitation of the claimed invention as best understood from the claims including:

cutting means which immediately after the nozzle cuts up the extruded ice mass into product pieces which fall down on a receiving device for further processing, characterised in that the cutting means comprises

a first knife (e.g., 20), which is reciprocally arranged in a transverse first, plane immediately after the outlet of the nozzle and arranged with a first stroke length,

a second knife (e.g., 40) which is reciprocally arranged in a plane which is parallel to the first plane and which is arranged immediately below the first knife with respect to the flow direction out of the nozzle, the second knife is arranged with a second stroke length which is smaller than the first stroke length, and

means (e.g., 42, 48) for simultaneous reciprocation of the first and the second knife;

[claim 2] comprising means for control of the movements of the knives, securing that the first knife is guided in a first transverse stroke which consists in a complete through-cutting of the ice mass, and that the second knife in a simultaneously movement is guided partly through the ice mass in an oppositely directed stroke of

which the direction of movement is opposite the direction of movement of the first stroke.

It is noted that the cutting device, per se, of Hahn can be oriented in any desired position, **without modification**, and thus is fully capable of performing the recited functions. Therefore, it is respectfully submitted that the cutting device of Hahn can be oriented (e.g., by rotating it clockwise 90 degrees) such that the plane of blade 40 is below the plane of blade 20, and further, the cutting device of Hahn is fully capable of being placed after/below a nozzle and above a receiving device as described in the intended use recitations of the claims again **without modification** of the cutting device structure disclosed by Hahn.

***Claimed Subject Matter***

12. Claims 3-14 are considered to read over the prior art of record because the prior art or record does not teach or suggest the combination of features as claimed.

However, these claims **cannot** be considered to be "allowable" at this time due to the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> paragraph set forth in this Office action. Therefore, upon the claims being rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action, further consideration of these claims with respect to the prior art will be necessary.



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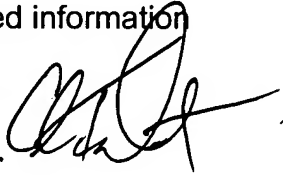
**Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**Clark F. Dexter**  
**Primary Examiner**  
**Art Unit 3724**

cf  
January 3, 2007